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323; Dec. Dig. § 161.* 10 Va.-W. Va. Enc. Dig. 469; 14 Va.-W. Va. Enc. Dig. 785.]

8. Trial (§ 52*)—Instructions.—The controlling question being whether or not the parents of plaintiff come within Act Feb. 27, 1866 (Acts 185-66, c. 18), declaring, under certain circumstances, negroes to be husband and wife, and their children legitimate, it was not only proper but essential to instruct the jury on that phase of the case.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 124, 126-129; Dec. Dig. § 52.* 7 Va.-W. Va. Enc. Dig. 704; 14 Va.-W. Va. Enc. Dig. 562; 15 Va.-W. Va. Enc. Dig. 510.]

9. Evidence (§ 293*)—Pedigree Declarations—Competent Declarants.—Only those connected with the family by blood or marriage are competent declarants on the question of pedigree.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 1152; Dec. Dig. § 293.* 7 Va.-W. Va. Enc. Dig. 53; 14 Va.-W. Va. Enc. Dig. 506.]

10. Evidence (§ 292*)—Pedigree Declarations—Persons Living.—Pedigree declarations of one living are not admissible; he being subject to examination as a witness.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 1151; Dec. Dig. § 292.* 7 Va.-W. Va. Enc. Dig. 54; 14 Va.-W. Va. Enc. Dig. 506.]

Error to Circuit Court, York County.

Action by Harriet Lemons against A. A. Harris and another. Judgment for defendants, and plaintiff brings error. Reversed and remanded for new trial.

Jones & Woodward, of Hampton, and *Sidney Smith*, of Norfolk, for plaintiff in error.

J. Thomas Newsome, of Newport News, and *C. H. Shields*, of Yorktown, for defendants in error.

GAYLE & EASON v. COMMONWEALTH.

Jan. 15, 1914.

[80 S. E. 741.]

1. Intoxicating Liquors (§ 231*)—Certificate of State Chemist—Cider—Evidence.—Under section 24 of Act of March 12, 1908 (Code Supp. 1910, p. 780), providing that in prosecutions under such act, section 14 of which prohibits the sale of cider containing more than 6 per cent. of alcohol in local option territory without a license, a certificate showing the analysis of the cider is admissible in evi-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

dence, it is absolutely necessary that a written request be made to the state commissioner of agriculture, that the certificate be made by the state chemist in person and not by an assistant, and that the return be made through the state commissioner.

[Ed. Note.—For other cases, see Intoxicating Liquors, Cent. Dig. § 291; Dec. Dig. § 231.* 8 Va.-W. Va. Enc. Dig. 36; 14 Va.-W. Va. Enc. Dig. 589; 15 Va.-W. Va. Enc. Dig. 540.]

2. Statutes (§ 241*)—Penal Statutes—Construction.—A penal statute must be strictly construed.

[Ed. Note.—For other cases, see Statutes, Cent. Dig. §§ 322, 323; Dec. Dig. § 241.* 12 Va.-W. Va. Enc. Dig. 771; 14 Va.-W. Va. Enc. Dig. 553; 15 Va.-W. Va. Enc. Dig. 936.]

3. Constitutional Law (§ 46*)—Constitutionality of Statute—Necessity of Determination.—The constitutionality of a statute will not be determined in any case unless it is absolutely necessary.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. §§ 43-45; Dec. Dig. § 46.* 3 Va.-W. Va. Enc. Dig. 184; 14 Va.-W. Va. Enc. Dig. 233; 15 Va.-W. Va. Enc. Dig. 196.]

Error to Circuit Court of City of Suffolk.

Gayle & Eason were found guilty of crime, and they bring error. Reversed.

Jno. N. Sebrell, Jr., of Norfolk, for plaintiffs in error.

The Attorney General, for the Commonwealth.

METROPOLITAN LIFE INS. CO. OF NEW YORK *v.* O'GRADY.

Jan. 15, 1914.

[80 S. E. 743.]

1. Evidence (§ 202*)—Admissions—Interest—Insurance.—In an action on a life insurance policy, declarations made by the insured before he applied for insurance are not admissible in evidence as admissions, since, to be admissible, the person making them must at the time have some interest in the matter afterwards in controversy.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 693-696; Dec. Dig. § 202.* 4 Va.-W. Va. Enc. Dig. 329; 14 Va.-W. Va. Enc. Dig. 310; 15 Va.-W. Va. Enc. Dig. 257.]

2. Evidence (§ 252*)—Declarations of Insured—Admission against Beneficiary.—In an action by a beneficiary on a life insurance policy, where defense is made on the ground that the insured had misrepresented his age and health, his declarations cannot be received in evidence to prove the truth of the representations; but, after

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